

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL
COMMISSION MINUTES
APRIL 16, 2004**

The following narrative and summary highlights actions taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on April 16, 2004. The meeting was tape-recorded and the tape is on file at the ABC Commission/Legal Division.

ROLL CALL

Chairman Douglas A. Fox was present for the meeting, along with Commissioner Ricky Wright and Commissioner Mike Joyner.

MINUTES OF MARCH 12, 2004 MEETING

The Chairman asked Commission Member Ricky Wright and Commission Member Mike Joyner if they had any corrections or additions regarding the Commission minutes from the March 12, 2004, meeting. Neither Commissioner Wright nor Commissioner Joyner had any corrections or additions. The Chairman made a motion to approve and waive the reading of the minutes into the record. Seconded by Commissioner Wright. So Ordered.

EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST

As required by Executive Order Number One, the Chairman asked Commissioner Wright and Commissioner Joyner if there were any known conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Wright and Commissioner Joyner stated that they had no conflict of interest. The Chairman stated he had to recuse himself from the following cases #19 Dodges Store, #72 Scotchman 126, #89 Coastal Beverage Company and #90 Level 5 at the City Stage.

The Chairman made a motion to allow Agenda Item III, ABC Store Location, to be first because of time restraints. Seconded by Commissioner Wright. So Ordered.

III. ABC STORE LOCATION - CUMBERLAND COUNTY ABC BOARD. ABC Administrator Michael Herring presented information regarding the proposed store location in Cumberland County. ALE Agent Robert Glenn Branch, conducted the investigation and found that the proposed location would be a self serve retail store. The proposed location is a wooded lot and would be purchased from Riddle Commercial Properties. No conflict of financial conflict of interest exists between the property owners and the Cumberland County ABC Board members. The nearest church is three-tenths of a mile south and the nearest school is approximately three point nine-tenths of a mile from the proposed location. Pursuant to ABC Commission Rules, the 30-day Notice of

Intent to open an ABC store was posted. The ABC Commission has some received objections in opposition. Mr. Herring went on to state that two letters and some petitions were sent in. The first letter was from Judson Baptist Church and they attached a petition with 879 signatures on it. The church passed a resolution in objection of the proposed location.

Mr. Herring stated that present today was Steve Satisfsky, Chairman of the Cumberland County ABC Board, along with Gene Webb, General Manager and Stanley Johnson, another board member. Mr. Satisfsky presented the Commission with an outline of the proposed property and its surrounding businesses. Commissioner Mike Joyner asked if there was anyone present to speak in opposition to the proposed location. Mr. Herring stated there was not anyone present to speak in opposition. Mr. Herring recommended that the Commission approve the ABC Store. The Chairman made a motion to approve the store location. Seconded by Commissioner Joyner. So Ordered.

I. HEARING CASES – 94 LISTED

Assistant Counsel K. Renee Cowick spoke regarding contested case #1, Tsunami Sportsbar and Grill. She stated that the hearing was January 15, 2004, in Carolina Beach and heard by Administrative Law Judge James L. Conner. The respondent received a notice of hearing on December 26, 2003, and no one appeared at the hearing on behalf of the respondent. Judge Conner recommended that the ABC permits be suspended for 55 days and impose a penalty of \$500.00. Ms. Cowick asked the Commission to adopt Judge Conner's decision. Chairman Fox asked if the Commission had heard from the respondent.

Ms. Cowick further stated that the local law enforcement officers were sent to the known addresses of the employees of the business and no one was home. Since that time, they have submitted a trade name change and are operating under a different trade name. Ms. Cowick also stated that an attorney contacted her a day after the hearing in regard to when the hearing was. The Chairman made a motion to adopt the Findings of Fact and Conclusions of Law of the Judge Conner. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that contested case #2 Taqueria El Azteca was a case where the permittee failed pay their registration fee for their ABC permit. Administrative Law Judge Beecher R. Gray heard this case on February 23, 2004. Judge Beecher Gray granted Summary Judgment in favor of the ABC Commission and ruled that the permittee's permits be suspended until the registration fee was paid. Mr. Gregory requested the Commission adopt and accept the Judge's ruling. Mr. Gregory stated that contested cases #3 Dona Ole Restaurant and # 4 Brown Mountain Grocery and Service Station were very similar; they were also failure to pay registration fees of ABC permits. Summary Judgments were also granted in these cases. The Chairman made a motion to accept the decisions of Administrative Law

Judge Beecher R. Gray and Administrative Law Judge Sammie Chess, Jr. Seconded by Commissioner Wright. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that Mr. and Mrs. Hammond were present to speak in regard to contested case #5, Larkins on the Lake Bay Front Bar and Grill. Mr. Gregory said that Temporary Administrative Law Judge John C. Hunter heard the case in Asheville on October 8, 2003. On November 2, 2002, ALE Agent John Pace sent a minor, Matthew Justin Cox into the establishment. Mr. Cox went to the bar, ordered a malt beverage from the bartender, Randy Elliott. Mr. Cox paid for the malt beverage and Agent Pace came in and wrote up the employee and later a violation was submitted to the ABC Commission. Mr. Gregory went on to say that the decision written by Judge Hunter was excepted in three parts. Findings of a Fact 1-16 were fine and recommend that the Commission accept them. The Commission rejects Finding of Facts #17 for the following reasons: The only mention in the transcript that the bartender, "Randy," thought the minor, Matthew Cox, was over 21 is in the closing argument (Transcript page 38) where the respondent argued that the bartender thought the minor was 22 years old. Mr. Gregory further stated that closing argument is not evidence and can't be considered. The Administrative Law Judge John C. Hunter took it as fact and put it down as Finding of Fact #17.

Mr. Gregory recommended that #17 of the Findings of Fact be stricken and Adopt Conclusion of Law 1-5. Mr. Gregory asked that the Commission reject Conclusion of Law #6 for the following reasons: In part the ALE Agent allowed the minor, Matthew Cox, to carry and present an ID, that did not clearly indicate his birth date. The employee asked for and inspected the ID carried by the minor and based upon the inspection, the employee believed the minor to be over the age of 21 years. Mr. Gregory stated that the statement was based on the Conclusion of Law #17 and if you reject Conclusion of Law #17, then you have to reject Conclusion of Law #6. Conclusion of Law #6 is contrary to Finding of Fact #14. Finding of Fact #14 states that the birth date on the photocopy of Matthew Cox's driver licensed received into evidence was not legible and is unclear from inspection of the photocopy whether the birth date was legible on the original drivers license that was used in this undercover operation. Mr. Gregory asked that the Commission adopt Conclusion of Law #6, as written in the exceptions because if the Commission rejects Conclusion of Law #17 and Conclusion of Law #6, which is contrary to the Findings of Fact #14, it has to look whether or not the respondents have a defense for selling to a minor. Mr. Gregory asked that the Commission adopt Conclusion of Law #6 as written in his exceptions and the Administrative Law Judge's decision also be stricken for reasons based on Conclusion of Law #6 and in part on Finding of Fact #17. He also asked that the decision of the Judge Hunter be stricken and this be adopted. He further recommended that the permittee's permits be suspended for 55 days, the last 5 days to be suspended upon a penalty of \$500.00.

Mr. Mark Hammond spoke regarding his establishment and stated that they run a good, safe business. They have been in business for 11 years with no citations from any government agencies and they participate in all local ALE and ABC sponsored training

programs. Mr. Hammond further stated that they have literature regarding guidelines to spotting legitimate or fake identification's. He went on to state that it was very clear that an underage minor working for Alcohol Law Enforcement did come into the establishment and present an ID to purchase alcohol beverage. Mr. Hammond further stated that their bartender looked at the ID thoroughly. He made a decision based on his analysis of that ID that the Mr. Cox was over the age of 21. He stated that he didn't feel that a violation occurred. Mr. Hammond said that the morning of the trial in October 2003, the minor went to a local DMV office, turned in the driving license that was used in the establishment because it wasn't legible and received a new license. They were unable to enter that piece of evidence into that contested case because the minor chose that day to receive a new license. Mr. Hammond asked the Commission support the decision of the Administrative Law Judge Hunter as well as looking at the record of the establishment and participation of this case.

The Chairman stated that the burden of proof was on the bartender as to whether the person 21 years old or less than 21 years old. The Chairman made a motion to reject Finding of Fact #17, based on page 38 in the transcript, which thereby rejects Conclusion of Law #6. Based upon Finding of Fact #17 being contrary to Finding of Fact #14 and the Commission thereby rejected Conclusion of Law #6 based upon the Finding of Fact #17 and adopts Findings of Facts 1-16 and Conclusions of Law 1-5. The Chairman also said to remove Conclusion of Law #16 and adopt the exceptions of Conclusion of Law #16. The Commission adopted a decision and found a violation, but will withhold the fine based upon the Hammond's previous attempt to do well. Seconded by Commissioner Wright. Attorney William Potter suggested to the Commission that they issue a Prayer for Judgment type of judgment. The Chairman stated that he had wondered if it were a proper type of judgment to issue. The Chairman withdrew his motion as far as the penalty and changed it to a Written Warning with the stipulation that the permittee request Alcohol Law Enforcement to come and do an onsite class for their employees, with a letter back to the Commission within 60 days that it has been completed with the local Alcohol Law Enforcement Officer. Seconded by Commissioner Joyner. So Ordered.

Since the Chairman recused himself from #19 Dodges Store, #72 Scotchman 126, #89 Coastal Beverage Company and #90 Level 5 at the City Stage Commissioner Wright made a motion to adopt and ratify those cases. Seconded by Commissioner Joyner. So Ordered.

Chief Deputy Counsel Fred A. Gregory stated that #32 Sids Showgirls and #78 La Frontera Mexican Restaurant be continued.

The Chairman stated that he had reviewed the first offense cases as per the resolution. Made a motion to adopt the orders as signed. Seconded by Commissioner Wright. So Ordered.

II. The following is a list of first offense violation cases, in which Orders were signed by the Chairman on April 16, 2004 pursuant to the Commission's authorizing resolution dated November 8, 2002:

B P Food Shop – 426 Westinghouse Boulevard, Charlotte, NC 28273
Bettys – 235 North Main Street Hwy 21, Sparta, NC 28675
By Lo – 3619 Reynolda Road, Winston-Salem, NC 27106
Elizabeth Billiards – 1400 Central Avenue, Charlotte, NC 28205
Eman Shop – 3435 The Plaza, Charlotte, NC 28205
Yellow Rose at Touchstone – 9217-F Baybrook Lane, Charlotte, NC 28226
Fast Shoppe – Hwy 211 and Seven Lakes Drive, Seven Lakes, NC 27376
Fatz Café – 118 Hilltop Way, Forest City, NC 28043
Holiday Inn Havelock – 400 Hwy 70 West, Havelock, NC 28532
K Korner Stop – 543 West Hamlet Avenue, Hamlet, NC 28345
Leesville Mini Mart – 6606 Leesville Road, Durham, NC 27703
Macs Food Store 1 – 8477 NC Hwy 211, Taylortown, NC 28374
Macs Food Store 5 – Hwy 211, West End, NC 27376
Mi Pueblito Mexican Restaurant 4, 220 Oak Street, Forest City, NC 28043
One Stop 8 – 1200 East Marion Street, Shelby, NC 28150
Racetrac 585 – 1141 Lenoir Rhyne Boulevard, Hickory, NC 28602
San Jose Restaurant – 1700 Raleigh Road Suite 120, Wilson, NC 27893
Trade Mart 89 – 1640 North Garnett Street, Henderson, NC 27536
Twin Oaks General Store – 24 US Hwy 221, Sparta, NC 28675
Winn Dixie 2101 – 11180 South Tryon Street, Charlotte, NC 28273

REMAINING OFFERS IN COMPROMISE

The Chairman made a motion to ratify all remaining offers in compromise. Seconded by Commissioner Wright. So Ordered.

IV. OTHER BUSINESS

Administrator Michael Herring stated he had received a request for a merger with the Forsyth Municipal ABC Board and the Town of Oak Ridge. Mr. Herring stated that on November 4, 2003, the Town of Oak Ridge in Guilford County voted and approved the establishment of an ABC Store. Mr. Herring stated that he met with the board and gave them some options and encouraged them to either merge their system with the Greensboro ABC Board or with the Forsyth Municipal ABC Board. The Town Council recently voted to merge their new system into the consolidated ABC system known as the Forsyth Municipal ABC Board. The Town of Oak Ridge decided that it was in the public's best interest to merge. Mr. Herring asked that the Commission approve the merger. The Chairman made a motion to approve the merger. Seconded by Commissioner Wright. So Ordered.

The Chairman stated that #94 Triangle Billiards and Blues Club was added to the agenda late yesterday. He made a motion to approve the offer in compromise. Seconded by Commissioner Wright. So Ordered.

Acting General Counsel Tim Morse stated that the Western District Bankruptcy Court of North Carolina entered an order on April 1, 2004, approving the assumption and assignment of the warehouse contract from JA Jones to LB & B Associates, Inc. Mr. Morse presented information to the Commission of the assignment of the warehouse contract to LB & B Associates, Inc. He further stated that he had received evidence showing that LB & B had proper bond and proper certificate of insurance. Mr. Morse stated they have been up and running since midnight of April 1, 2004. Mr. Herring stated that the computer crashed on April 2, 2004, new equipment was brought in and the employees worked over the weekend to fill all back orders. He also stated that we are now shipping to the military. Commission Joyner asked if the salary of the employees was still an issue. Mr. Herring stated that the benefit package that LB & B offers is substantially better than the one that JA Jones offered and all the employees that were retained are very happy with the benefits. He further stated that all the upper management staff and administrative staff were retained. The Chairman stated that he would like a letter sent to the Office of Attorney General Roy Cooper thanking his office for all their help.

Administrator Michael Herring stated he had received a request for approval for exterior point of sale signage at special events. Mr. Herring stated that with the assistance from the legal division, they had prepared a Resolution that would authorized some limited outdoor signage at these special events. Requests would have to be submitted 30 days prior to the special event. Mr. Herring recommended that the Commission approval the request. The Chairman made a motion to approve the resolution. Seconded by Commissioner Wright. So Ordered.

Acting General Counsel Tim Morse stated that the Commission had two pending requests for exemption for sponsorship. Mr. Morse went on to state that they involved Lowes Motor Speedway, Diageo and Miller Brewing. Diageo's and Miller Brewing's requests were received quite late this week. The Chairman stated that he would like it noted in the record that Diageo's request was received at 4:15 p.m. on Thursday, April 15, 2004. Mr. Morse stated that the legal division needed time to review the requests in detail as to whether a proposed exemption should be approved. Mr. Morse asked the Commission if they would delegate to the Chairman the authority to sign off on any exemption requests possibility before the next Commission Meeting. Commission Joyner made a motion to authorize the Chairman to sign exemptions until the next Commission Meeting. Seconded by Commissioner Wright. So Ordered.

With no further business, the meeting adjourned.

Douglas A. Fox
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

Tiffany C. Goodson, Legal Division